

**FirstMark Personal Communications
Systems, Inc.**

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JUN 22 1994

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

June 22, 1994

EX PARTE

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Re: *PP Docket No. 93-253, Competitive Bidding*

Please find attached our written ex parte concerning issues in the above-referenced proceeding. Please associate this material with the above-referenced proceeding.

I am submitting two copies of this notice in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



Robin C. Brooks
President

218 N. Jefferson
Chicago, Illinois 60661
Phone: 312-715-1600
Fax: 312-930-1998

780 Third Avenue
New York, New York 10017
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June 22, 1994

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
Mail Stop 0101
1919 M Street, NW, Room 814
Washington, DC 20554

Dear Chairman Hundt:

Re: *PP Docket No. 93-253, Competitive Bidding*

The Commission has before it a series of decisions critical to ensuring significant participation by minorities and women in the telecommunications industry of the future. The actions taken next week with respect to the auctioning of spectrum for broadband PCS services must not only reflect good intentions, but must establish practical rules for minorities and women that will work in the marketplace. The rules which the Commission will draft must open opportunities while also ensuring access investment to capital and allowing for formation of joint ventures so that significant numbers of minorities and women will participate in a meaningful way in the PCS industry.

I am writing now to provide my view as to how the Commission can resolve the issues before it and foster the objective of promoting Designated Entity participation in the PCS industry.

1. The Commission should award credits (or preferences) of up to 40% to bidders that are controlled solely by Designated Entities and to bidders that have significant ownership, management, and investment by Designated Entities. Credits should be awarded based on a sliding scale, tied to the extent of ownership and management. These bidding credits should be applied to the Designated Entity's pro rata share of bidding capital. We believe this approach is absolutely critical to ensuring that Designated Entities have the

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flexibility to form alliances and joint ventures based on competitive and operating conditions, which will vary from market to market and region to region. In some markets, especially those where an integrated, regionally owned and operated system is the most viable competitor, a Designated Entity may not be able to raise sufficient capital to support 51% ownership. If the Designated Entity has a substantial ownership interest, contributes its share of capital, and participates actively in management, the Designated Entity should be able to use bidding credits to support its involvement in the joint venture.

2. In order for the Designated Entity to maintain a genuine role in the management and operation of the bidder, we suggest that the Designated Entity must be one of the general partners if the bidder is a partnership, or must be on the board of directors and on the bidder's governing body (i.e., the management or executive committee) if the bidder is a corporation.

3. Winning joint-ventures that include Designated Entities should receive installment payment terms for 90% of the amount due, with no payment due for two years, interest only for the next eight years, and payment of all amounts due at the end of the tenth year.

4. For the same reasons as discussed in item 1 above, Designated Entities should not be confined to bidding on a particular block in order to obtain bidding credits. Bidding credits should be available to Designated Entities irrespective of the block they are seeking. Designated Entities need bidding credits to submit viable bids, and different markets will require different marketing and bidding strategies. To limit the availability of bidding credits to only one identified block handicaps Designated Entities and does not allow them the operating flexibility to respond to prevailing market conditions. This is especially true if the block available to Designated Entities is a smaller MTA that will have to compete against integrated systems operated by larger companies covering a much larger geographical area.

5. Awarding credits across the board and to bidders with substantial Designated Entity participation in ownership or management clearly promotes the goal of expanding opportunities for minorities and women in the telecommunications industry. Indeed, this may be the only way to ensure that Designated Entities have the opportunity to participate in the larger regional systems that may eventually be the only viable competitors in the provision of PCS services. No one can predict with certainty how the auction process will work or what results it will produce. If Designated Entities are going to have a meaningful role in the PCS industry, they must have the flexibility to establish different levels of ownership and management to meet varying competitive and market conditions. The issue of unjust enrichment of individual Designated Entities should be addressed through appropriate limits on the transfer of licenses whose owners have benefitted from credits or preferences. That problem should not be addressed by imposing requirements that

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effectively foreclose Designated Entities from competing either as part of a larger joint venture or in markets outside of a specific block.

6. Tax certificates should be made available to investors in Designated Entities. This provision will assist Designated Entities in attracting investment capital.

If Designated Entities are to have effective participation in the provision of broadband PCS services, I urge the Commission to adopt the full set of preferences presented herein. I appreciate your consideration.

Sincerely,



Robin C. Brooks
President

cc: Bill Kennard